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WHY THE EARLY INHABITANTS

OF

VERMONT

Disclaimed the Jurisdiction of New York,

AND ESTABLISHED

AN INDEPENDENT GOVERNMENT.

AN ADDRESS

DELIVERED BEFORE THE

New York Historical Society,

DECEMBER 4th, 1860.

BY

HILAND HALL.

BENNINGTON, VT.
C. A. PIERCE & COMPANY, PRINTERS, 1872.
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Why the early inhabitants of Vermont disclaimed the jurisdiction of New York, and established an independent government.

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ADDRESS.

It is known to the readers of general history that the territory now the State of Vermont was formerly claimed by the State of New York; that the King of Great Britain prior to our revolution had made an order in council that it should constitute a part of that province; that the people who inhabited the territory (which was then known by the name of the New Hampshire Grants,) were dissatisfied with the conduct of the New York Government towards them; that they resisted its authority, revolted from its jurisdiction, and set up for themselves an independent commonwealth, which was finally recognized by New York as such, and admitted a member of the Federal Union.

The causes which produced this revolutionary separation from New York are believed not to have been so generally sought for as to be familiarly understood. I propose to occupy about half an hour of your time this evening in exhibiting to you *the causes of this revolt*—in the light in which they appear to a Vermonter. You will, of course, understand that the subject cannot be fully discussed in so brief a space, and that all you are to expect is an outline view.

One hundred years ago at this time England was in a high state of exultation at the accession of the young King George the Third, to the throne, and over the news then recently

received of the complete extinguishment of the French power in America. This latter event had been accomplished in the previous month of September (1760,) by the capture of Montreal, and the formal surrender of the province of New France to the English arms; and it furnished an occasion for great and extraordinary rejoicing in this country. It not only put an end to a long and bloody war in which the colonies, particularly those of New England and New York, had largely participated, but furnished the frontiers of those provinces with perfect security against foreign and Indian depredations—a security which they had never before enjoyed.

At that time the territory now embraced by the State of Vermont, with a trifling exception, was an uninhabited wilderness. It had, however, been frequently traversed by the men of New England in their expeditions to the theatre of war in the vicinity of Lakes George and Champlain, and the fertility of its soil had become familiarly and favorably known to them. No sooner, therefore, was the territory opened for safe occupation by the conquest of Canada, than a strong desire pervaded the New England colonies to emigrate to it. Settlements were accordingly commenced in the spring of 1761, and continued thereafter to be rapidly made. In the course of four or five years the settlers could be numbered by thousands; they had cleared lands and erected dwellings and out-houses; opened roads; organized churches and built houses of worship, and established schools, and were beginning to enjoy many of the advantages of cultivated society, with favorable prospects for future improvement and prosperity.

The settlers occupied their lands and held their titles under charters from the province of New Hampshire, whose jurisdiction they acknowledged. These charters were issued by Gov. Benning Wentworth, under the great seal of the province, and in the name of the King—each covering a township of about six miles square; and the charters conferred on the future inhabitants the usual corporate powers of New England townships.

In the spring of the year 1765 the settlers were informed by a proclamation of Lieut.-Governor Colden, then administering the Government of New York for the King, that his Majesty, by an Order in Council of the 20th day of July preceding, had declared the western bank of Connecticut River to be the

boundary between the provinces of New Hampshire and New York; and the proclamation called upon them to yield due obedience to the laws and officers of the latter province.

Immediately upon the promulgation of this order of the King, the New Hampshire claimants were treated by Lieut.-Governor COLDEN as trespassers upon the lands they occupied, and he proceeded to grant them anew to others. *Then came on the long and bitter strife for the possession of these lands.* The new claimants demanded their surrender, and when refused, suits in ejectment for them followed; then trials at Albany, in which the New Hampshire charters are declared void and not allowed to be read to the jury; verdicts for the plaintiffs; writs of possession issue; the Sheriff unable to execute them; the *posse* of the county of Albany called to the aid of the Sheriff, and marched three hundred strong to Bennington; the settlers appear in arms and the *posse*, sympathizing with them, refuse to act; the power of the county being found ineffectual, application is made to GEN. HALDIMAND, commanding the King's forces in New York, and to the ministry in London, for a body of regular troops to enforce submission, and refused; the New York rulers and claimants then resort to indirect measures; their opponents are indicted at Albany as rioters, and rewards offered for their apprehension; remote lands are stealthily occupied by the New York claimants; the occupants are treated as intruders and frightened away, or driven off by force; more indictments for riots and threats of invasion by regular troops; formation under ALLEN and WARNER of a military corps,—its members styling themselves Green Mountain Boys,—denominated by COLDEN "the Bennington Mob;" summary condemnation and outlawry by the New York Assembly without trial, of ALLEN, WARNER and others, leaders of the settlers; *their* defiant denunciation of this act of the Assembly; they meet in conventions, appoint committees of safety with extensive powers, and finally, in 1777, form a constitution of government as an independent State.

During the period of this controversy, the claims of New York were elaborately stated and ingeniously advocated on two occasions by JAMES DUANE, an eminent lawyer of this city, and for several years a delegate in the Continental Congress from this State, and who had a deep personal interest in their success.

The first of these arguments, of which MR. DUANE was the

reputed author, is entitled "A state of the right of the colony of New York with respect to its eastern boundary on Connecticut River, so far as it concerns the late encroachments under New Hampshire," and was published by the authority of the Colonial Assembly in 1773. The other document is an argument prepared by Mr. Duane to be used on the hearing of the Vermont question before Congress in 1780, and which is found in manuscript in the archives of this Historical Society.* These two documents, so far as they relate to the origin of the claims of the respective parties, and the causes of their difference are substantially alike. They place the New York side of the controversy in its most plausible light, and are calculated to give the casual reader a favorable impression in regard to the measures and position of the rulers of that province. But I feel bound to say that they are altogether *unreliable*. They are *unreliable*, not so much because the facts which are stated are *untrue*, as that they are *unimportant* to a right understanding of the questions discussed—the main facts upon which the proper solution of these questions depend, being skillfully kept out of view.

I cannot on this occasion enter into any detailed examination of the several points made in these labored documents. I will, however, call your attention to a few of the most prominent errors of fact and argument which pervade them, and render false the conclusions to be drawn from them.

It is assumed and claimed then, in behalf of the New York colonial rulers that the early inhabitants of Vermont purchased the lands they held under New Hampshire, knowing their titles were of doubtful character, and that they were consequently to be considered in the light of voluntary trespassers upon the New York title. Nothing could be more unfounded than this assumption.

Prior to the Order of the King in Council, of July, 1764, before mentioned, declaring Connecticut River to be the boundary between the two provinces, the eastern boundary of New York had always been understood, in New England from whence the settlers came, to be a line running from the southwest corner of Connecticut on Long Island Sound, northerly to Lake Champlain. It had been so laid down in *all* the maps of the American colonies which had been published, either in England or America. I speak with much confidence on this point, having

* See Note 1 at the end of this Address.

within the past twenty years examined all the maps of the colonies—and they are numerous—which I have been able to find, either in books or separately, in the principal public libraries in this country, including the old library of Congress, those of the States of Massachusetts and New York, of the New York Historical Society, and that of Harvard College; and in all of them, without a single exception, is the before mentioned line known as the twenty mile line from the Hudson River, marked as the eastern boundary of New York, and the western boundary of New England. Among these maps may be particularly mentioned that of Dr. Mitchell, of the British American provinces, prepared at the request, and under the direction of the English Board of Trade, and published in London in 1755, in which New Hampshire is made to extend westward to that twenty mile line, and to Lake Champlain, thus embracing the present territory of Vermont. This territory had been repeatedly recognized, and uniformly treated, by the English Crown and Ministry, as belonging to New England and New Hampshire, and never, as constituting a part of New York; and there can be no doubt whatever, that the settlers under New Hampshire were purchasers and occupiers of their lands in good faith, fully believing their titles to be valid.*

Again, it is claimed by Mr. Duane, in behalf of New York, that prior to the order of the King, of July, 1764, before mentioned, the legal title of that province to extend eastward to every part of Connecticut River, and thus to embrace the territory of the New Hampshire Grants, was clear and unquestionable, under the Charter of King Charles, the Second, to his brother, the Duke of York, in 1664.

Although the words of this Charter would at first view seem to favor the construction given it by New York, yet its descriptive language, as a whole, is so ambiguous that all effort to use it to designate any territory with definite boundaries is unavailing. Without going into a critical examination of its terms, which the occasion will not permit, I think I may safely say that this Charter claim of New York, when tested by the light of contemporaneous and subsequent history will be found at best to be of very doubtful character. I have only time to say of it now that, prior to the order of the King annexing the territory of the New Hampshire Grants to New York, in 1764—one hund-

* See Note 2.

red years after the date of the Charter—that province had never for a single moment exercised jurisdiction eastward to any part of Connecticut River; that the territory covered by those Grants had never been treated by the English Government as belonging to New York, but as before stated, as constituting a part of New Hampshire; that there is the strongest reason to believe that the Charter of KING CHARLES to the Duke of York in 1664, was not intended by the King, nor understood by the Duke, as designating Connecticut River as a definite boundary of the Duke's grant; that the Charter, so far as it related to the main land, was designed to embrace the territory of New Netherland, then held by the Dutch, and that territory only, whatever on being conquered its extent or limitation might be found to be; that fourteen years prior to the date of the charter, a line less than twenty miles from the Hudson River had been established by treaty between the Governor of New Netherland and the Commissioners of the New England Colonies, as the Dutch eastern boundary, which treaty of boundary had been ratified by the States General of Holland; that immediately on the conquest of New Netherland by the English, a few months after the date of the King's Charter, a twenty mile line was solemnly adjudicated and determined by the King's Commissioners, who accompanied the expedition, as the eastern boundary of the Duke's grant; that such boundary (being substantially the same with the present,) was recognized and acquiesced in by New York for more than three-quarters of a century, and that the first serious claim ever made by that province to extend eastward to Connecticut River, to the northward of the colony of Connecticut, was as late as the year 1750—eighty-six years after the date of the Charter under which the claim was then made.

The King's Order in Council, of July, 1764, by which the territory now Vermont was transferred from the jurisdiction of New Hampshire to that of New York, does not appear to have been founded an any considerations of public necessity or convenience. It weakened a small province to increase the power and extent of a larger one; and was made without consulting the feelings or interests of the people who were the subjects of the tranofer, and contrary to their wishes. The reasons for making it were doubtless *political—those of state policy*. The ministry were then preparing their measures for taxing the colonies,

and were anxious to circumscribe within narrow limits the stubborn republican spirit of New England, from which they anticipated the strongest opposition. New York was at that time a favored colony. CADWALLAR COLDEN, of high-toned, tory principles, who was then at the head of its administration, as Lieut.-Governor, was aware of this favorable disposition of the ministry, and quite willing to take advantage of it.

In urging on them the enlargement of his own government at the expense of the territory of New Hampshire, he uses language as follows:

"The New England governments," he says, "are founded on republican principles, and these principles are zealously inculcated in their youth, in opposition to the principles of the constitution of Great Britain. The government of New York, on the contrary, is established, as nearly as may be, after the model of the English Constitution. Can it be good policy," continues MR. COLDEN, "to diminish the power and extent of His Majesty's province of New York to extend the power and influence of the others?"

The Ministry concurred with Lieut.-Governor COLDEN in the policy of curtailing the power and influence of the republican colony, and hence its dismemberment for the benefit of the more aristocratic province.

But the new jurisdiction, distasteful as it was to the settlers, would doubtless have been quietly submitted to if nothing more had been demanded. But Lieut.-Governor COLDEN and his council claimed that the King's order not only gave them the powers of government as far eastward as Connecticut River, but that it had a retrospective operation, and was to be construed as declaring that such had always been the extent of the province of New York. As a consequence of this ingenious interpretation, they held that all the grants which had been previously made by WENTWORTH, Governor of New Hampshire—having been of lands not within his province—were null and void, and that the title still remaining in the crown, the land was subject to be granted anew.

It must have been plain to the rulers of New York that such new grants could not be made without doing great injustice to the claimants under New Hampshire. For even if it should be admitted that the title of the settlers to the lands they occupied

was not in legal strictness a valid one, still there could be no doubt that it was in a high degree equitable. The lands had been chartered in the name of the King, by one of his royal Governors having apparent authority to grant them, and had been purchased and improved by the settlers in good faith, they fully believing in the validity of their titles. It would be manifestly unjust and oppressive in the King—a palpable fraud on his subjects, to allow another of his Governors to deprive them of property thus honestly acquired. Yet such fraud and oppression was attempted in the royal name and earnestly sought to be consummated by the then ruling authorities of New York. The *motive* for this conduct on their part deserves particular consideration, and will now be inquired into.

Among the emoluments of the King's colonial Governors, those connected with the land grants formed a very important part. This was especially the case in New York, where the fees exacted were much larger than in any other province, amounting to over two thousand dollars for every tract or township of six miles square—of which the Governor's share exceeded seven hundred dollars, the residue being divided between the Governor's Secretary, the Attorney General, the Surveyor General, and other officials. This source of income was, however, becoming nearly exhausted—the previous grants having been so enormous as to cover nearly all the desirable lands in the province from which the Indian title had been removed. This new acquisition of territory from New Hampshire, if the lands could be re-granted, promised a rich and almost unlimited harvest of fees; and besides the perquisites of office which might thus be obtained by re-granting the lands, the Governor would be enabled to distribute them at his pleasure among his favorites and friends, thereby furnishing them, as was supposed, with the ready means of making fortunes, by disposing of them to the settlers and others.

Neither the interests of the crown nor that of the public required the making of these new grants. The declared object of the crown in authorizing the colonial Governors to grant lands was to promote the clearing up and cultivation of the country, and they were forbidden in their instructions to grant them unless they were needed by the grantees for actual settlement.

Prior to the promulgation of Lieut.-Governor Colden's proclamation in the spring of 1765, before mentioned, which an-

nounced the change of jurisdiction, about one hundred and thirty townships had been chartered within the territory of New Hampshire. The lands had either been granted to, or purchased by New England men who were rapidly removing to and settling upon them. There was no desire in New York to emigrate to this territory—there was no demand in that province for these lands for purposes of cultivation. All this was well known to Lieut.-Governor COLDEN, as well as to his official and unofficial advisers; but the temptation arising from the money to be pocketed and the patronage to be wielded, made him regardless of the claims and rights of others, and he proceeded at once to regrant the lands in large masses to the officers of his government and others, principally residents of this city—not forgetting in his liberal donations to his favorites and friends, to take very prudent care of himself and family. And so rapidly were these grants made that nearly all the valuable land that had been settled upon, situated on the west side of the Green Mountains, was covered with New York patents within a few weeks after the reception of the King's order by the Lieut.-Governor annexing the territory to the province, and before the settlers could have had any opportuniy to apply at New York for a confirmation of their New Hampshire titles.

Such was the condition of the New Hampshire claimants who had seated themselves nearest the old province of New York. The settlers on the east side of the mountain, whose lands were more remote from the city speculators and less coveted by them, may in general be said to have fared somewhat better, most of them being allowed the privilege of purchasing their lands a second time, by paying the exorbitant patent fees of the Lieut.-Governor, and his associate crown officers.

On the west side of the mountain the New Hampshire claimants met with few favors. So pressing indeed were the demands of the speculators, and so greedy were the New York officials for the fees to be obtained from land patents, that even the solemn prohibition of the crown was insufficient to restrain their issue. By an Order of the King in Council, made July 24, 1767, on application of the settlers, the Governors of New York were forbidden in the most peremptory terms and "on pain of his majesty's highest displeasure," from making any more grants within the disputed territory; but the order was

put at defiance and wholly disregarded—Lieut.-Governor Colden and his successors proceeding still to issue patents, as if no such order had been made.

The character and extent of these grants may in a great measure be ascertained from the records now remaining in the office of the Secretary of State, at Albany.

One of the noticable features of these grants, particularly those of an early date, is the irregular shape of the tracts of land which they describe. Instead of townships in a square or rectangular form bordering on each other, like those of New Hampshire, the New York patents would appear to have been issued upon surveys made to include the rich valley lands along the streams, and to avoid the rougher hills and mountains; and they were thus scattered over the territory in detached parcels and in all sorts of shapes, some of them having ten or more angles or corners.

These New York patents were in general issued for the benefit of a comparatively small number of persons, and of course in very large quantities to most of them. A few of these favored individuals may be mentioned. Among them Attorney General Kempe came in for a very large, though unascertained quantity of land; William Cockburn, a noted surveyor, for 30,000 acres, and Simon Metcalf, another surveyor, for 28,000 acres. Wm. Smith, a member of the Council, and author of the history of New York had 46,000 acres; James Duane, befor mentioned, 68,000 acres; John Kelly, a New York City lawyer, 115,000 acres; and Goldsbrow Banyar, Secretary to the Governor and Council, 145,000 acres. Besides these, there were many other grantees of lesser, though of large quantities —ranging from 2,000 to 20,000 acres each.

Nor did the New York Colonial Governors content themselves with their office fees for issuing patents; they also took special care to provide *themselves* with very respectable portions of the lands they granted.

By the King's instructions to the Governors of New York, lands were only to be granted, as before stated, to persons desiring them for actual cultivation; and in order to guard against grants for speculative purposes, no individual was to receive a quantity exceeding one thousand acres. But the object of the King in making this limitation was wholly perverted by his Gov-

ernors, who, by the fraudulent use of nominal grantees, issued their patents for the benefit of themselves and their friends for any quantity they chose, knowing the lands were not wanted for actual settlement, but only for purposes of speculation. In this manner the large grants which have already been mentioned were made. And *thus* Lieut.-Governor COLDEN, in making his grants, not only provided largely for the members of his family, but reserved for himself 21,000 acres by issuing patents in the names of twenty-one of his friends for 1,000 acres each, who immediately conveyed the land to him.

Lord DUNMORE, who administered the government for the King but about eight months, during parts of the year 1770 and 1771, in this manner obtained 51,000 acres lying in one body in the present county of Addison, in the State of Vermont, embracing a portion of the beautiful lake which bears his name. The patent was issued to fifty one individuals, among whom were several members of his council, Secretary BANYAR, JAMES DUANE, SIMON METCALF and JOHN KELLY, before mentioned, and other noted speculators. The patent bore date July 8, 1771, and five days afterwards, on the 13th day of the same month, every one of the fifty-one patentees conveyed their shares to the Governor.

In like manner his successor, Governor TRYON, a few months later, provided himself with 32,000 acres through the instrumentality of the same set of public officers and land traders. He also by the same mode furnished his son-in-law, the notorious EDMUND FANNING, with several large tracts of land, including one full township of six miles square. All of these grants of the Governors to themselves and members of their families were made in direct and palpable violation of the King's order in Council of July, 1767, prohibiting them in the strongest possible language from making any further grants. These patents having been issued, not only without the authority of the crown, but in defiance of it, would seem very clearly to have been illegal and void, and they would doubtless have been declared so by any impartial tribunal competent to decide upon their validity. No such tribunal could, however be resorted to by the settlers—the forms of judicial proceedings constituting an important part of the governmental machinery contrived by their adversaries to overcome and subdue them.*

To these and such like rapacious and mercenary claimants

See Note 3.

were the early inhabitants of the New Hampshire Grants required by the New York rulers to surrender lands which they had once fairly purchased, and had made more valuable by cultivation and improvement. The settlers were freemen,—intelligent, hardy and brave. Is it surprising that they should have resisted? Would it not, indeed, have been matter of astonishmert if they had done otherwise?

The settlers in various publications maintained the rightfulness of their forcible opposition to the measures of the New York claimants and government, on the principles which justify revolution, and seemingly with entire success. The American people revolted from the mother country, because of the imposition of taxes, which though small in amount, were founded on a principle that would allow the extortion of any further sum the parliament might at any time think proper to demand; thus destroying the security by which they held the residue of their property and leaving it at the mercy of the government. In the case of the inhabitants of the New Hampshire Grants the principle of government exaction was carried at once by New York to its utmost extent, by requiring of the settlers—not a fraction of their property—but an immediate surrender of their worldly estate—leaving them houseless and most of them penniless. If revolution was justifiable in the former case, as is now universally admitted, it would seem to have been much more clearly so in the latter?

If the measures adopted by the settlers to defend themselves and their property against the open and covert attack of their enemies—the Yorkers—sometimes wear the appearance of unfeeling harshness, they will, I think, be found on due consideration, to have been of a character well suited to the occasion, and in general no more severe than wisdom and sound policy dictated as a means of protection, and to save the necessity of resorting to the infliction of still greater evils. And when it is remembered that a complete separation from the government of a powerful province and State was forcibly effected, with but a trifling injury to property, and with small, if any, sacrifice of human life,* we shall, I think, find quite as much to approve and admire in the acts and measures of those conducting it, as to condemn.

See Note 4.

THE FOLLOWING NOTES ARE ADDED IN 1872.

NOTE 1, PAGE 6.

The document referred to in the text has been published in the Collections of the New York Historical Society, for 1870, from which it would seem that it was prepared about 1785, to be used on the boundary question then pending between New York and Massachusetts. It was doubtless prepared by Mr. Duane, and is substantially the same as his argument before Congress in 1780.

NOTE 2, PAGE 7.

For the evidence of these and the other historical statements in this Address, reference is made to Hall's Early History of Vermont, published in 1868, where the authorities are collected, and the subject of the controversy with New York treated at large.

NOTE 3, PAGE 13.

The quantity of Vermont lands granted by the several governors of New York, from the spring of 1765 to the commencement of the Revolution, for which patent fees were receivable, exceeded 2,100,000 acres, more than 1,900,000 acres of which were granted in direct violation of the King's Order in Council, of July, 1767, prohibiting any such grants.

The quantity of lands thus granted by the several governors during the above period, as appears by the colonial records at Albany, with the amount of fees allowable to each, was as follows:

Lt. Gov. Colden,	965,500 acres,	his fees being	$30,171.81
Governor Moore,	144,620 "	" " "	4,519.37
Gov. Dunmore,	455,950 "	" " "	14,248.44
Governor Tryon	549,540 "	" " "	17,173.12
	2,115,610		$66,112.74

For these same grants the fees to the Attorney General, the Surveyor General, the Secretary of the Province, the Clerk of the Council, the colony Auditor and the Receiver General, amounted to $124,820.99 more, making the enormous levy on Vermont lands for patent fees of $190,933.73. For a list of these grants see Collections of the Vermont Historical Society Vol. 1, page 147–158.

NOTE 4, PAGE 14.

At a convention of the settlers on the New Hampshire Grants, held at Westminster January 15, 1777, the territory was declared to be an independent state by the name of New Connecticut. By another at Windsor on the 4th of the following June, the name of the state was changed to that of Vermont, and at a convention held at Windsor, in July of the same year, a constitution was formed and its government put in operation, and on the 4th of March, 1791, Vermont became the fourteenth state of the Federal Union, with the free consent of New York and of all the other states.

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